



TIMELINE OF MAJOR SUPREME COURT DECISIONS ON WOMEN'S RIGHTS

1971

Reed v. Reed, 404 U.S. 71 (1971). In this case, the United States Supreme Court rules for the first time ever that a law that discriminates against women is unconstitutional under the Fourteenth Amendment. In reaching this result, the Court relies on a brief written by Professor Ruth Bader Ginsburg, the ACLU Women's Rights Project's first director. The Court rules unanimously that a state statute that provides that males must be preferred to females in estate administration denies women equal protection of the law.

Phillips v. Martin Marietta, 400 U.S. 542 (1971). The Supreme Court rules that an employer violates Title VII when it refuses to hire women with young children while hiring men who are similarly situated.

1973

Frontiero v. Richardson, 411 U.S. 677 (1973). In this case, initially filed by the Southern Poverty Law Center, and the first argued before the Supreme Court by Professor Ginsburg, the Court strikes down a federal statute that automatically grants male members of the uniformed forces housing and benefits for their wives, but requires female members to demonstrate the "actual dependency" of their husbands to qualify for the same



photo courtesy of Sharron Frontiero Cohen

Sharron Frontiero Cohen

benefit. Four Justices conclude that laws differentiating by sex are inherently suspect and subject to strict judicial scrutiny, as are those differentiating by race.

Pittsburgh Press v. Pittsburgh Commission on Human Relations, 413 U.S. 376 (1973). The Supreme Court holds that employers' use of sex-segregated "Male Help Wanted" and "Female Help Wanted" columns and newspapers' publication of these columns is illegal, because sex-segregated columns enable employers to express unlawful gender preferences. On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief in the case.

1974

Geduldig v. Aiello, 417 U.S. 484 (1974). On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief that argues that laws discriminating on the basis of pregnancy make gender-based distinctions and should be evaluated under heightened scrutiny. The Court holds that a disability insurance program that denies benefits for disabilities resulting from pregnancy is not unconstitutional, as it does not involve discrimination on the basis of gender, but discrimination between pregnant and non-pregnant persons.

Kahn v. Shevin, 416 U.S. 351 (1974). In this Women's Rights Project case, originally filed by the ACLU of Florida, the Court holds that a Florida statute granting widows, but not widowers, an annual five hundred dollar exemption from property taxes is constitutional because the purpose of the statute is to close the gap between men and women's economic situations and there is a substantial relationship between this purpose and the exemption.

Corning Glass Works v. Brennan, 417 U.S. 188 (1974). The Supreme Court for the first time considers an Equal Pay Act claim based on an employer paying women less than men for the same work. It determines that the wage difference between Corning's female day inspectors

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and male night inspectors violates the Equal Pay Act. Professor Ginsburg, on behalf of the Women's Rights Project, authors an *amicus* brief.

1975

Weinberger v. Weisenfeld, 420 U.S. 636 (1975). Professor Ginsburg, on behalf of the Women's Rights Project, successfully argues that a provision of the Social Security Act providing for gender-based distinctions in the award of social security benefits is unconstitutional. In this case, the Court holds that the government cannot provide child-in-care benefits to widows with minor children and not to widowers, since such a provision discriminates against working women, whose families receive fewer protections as a result of their social security taxes than do men, and against widowers, who need such benefits in order to devote themselves to their children.

Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1975). The Supreme Court holds that it is unconstitutional for public employers to require women to take unpaid maternity leaves after the first trimester of pregnancy because of a conclusive presumption that pregnant women are no longer able to work, since such policies impinge on women's due process rights. On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief in the case.

Taylor v. Louisiana, 419 U.S. 522 (1975). The Supreme Court invalidates a Louisiana statute that allows women to serve as

jurors only when they expressly volunteer, which has the practical effect of almost entirely eliminating women from juries, and requires states to call men and women to jury service on an equal basis.

Stanton v. Stanton, 421 U.S. 7 (1975). The Supreme Court rules that a law setting the age of majority for women at eighteen and for men at twenty-one, based on the assumption that women need less education and preparation for adulthood than do men, is unconstitutional.

Turner v. Department of Employment Security, 423 U.S. 44 (1975). In this Women's Rights Project case, the Supreme Court invalidates a state regulation making pregnant women ineligible for unemployment benefits for twelve weeks before birth and six weeks after birth regardless of their capacity to work.

1976

Craig v. Boren, 429 U.S. 190 (1976). The Supreme Court adopts a "heightened scrutiny" standard of review to evaluate legal distinctions on the basis of

gender, which requires that a gender-based legal distinction bear a substantial relationship to an important governmental interest. This conclusion is based in part on a Women's Rights Project *amicus* brief written by Professor Ginsburg. The Women's Rights Project works closely with the plaintiffs' attorney in the case.

Regents of the University of California v. Bakke, 429 U.S. 953 (1976). On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief to the Court successfully defending affirmative action in public higher education.

General Electric Co. v. Gilbert, 429 U.S. 125 (1976). Professor Ginsburg, on behalf of the Women's Rights Project, authors an *amicus* brief to the Court, arguing that the exclusion of pregnancy-related conditions from a private employer's disability plan violates Title VII. The Court again concludes that pregnancy-based discrimination is not sex discrimination. Congress will override this decision in 1978, through passage of the Pregnancy Discrimination Act.



photo courtesy of Curtis Craig



photo courtesy of Carolyn Whitener

Curtis Craig and Carolyn Whitener, plaintiffs in *Craig v. Boren*

1977

Califano v. Goldfarb, 430 U.S. 199 (1977). In this Women's Rights Project case, argued by Professor Ginsburg, the Supreme Court invalidates gender-based distinctions in the payment of social security survivor benefits, finding these distinctions to be based on archaic assumptions regarding women's dependency.



Kim Rawlinson

Dothard v. Rawlinson, 433 U.S. 321 (1977). The Supreme Court invalidates Alabama's height and weight requirements for prison guards that have the effect of excluding the vast majority of female candidates, finding that these requirements violate Title VII. However, the Court upholds Alabama's exclusion of women from many jobs as prison guards in all-male maximum security prisons, finding that in such an environment, women could present a security risk. Professor Ginsburg, on behalf of the Women's Rights Project, co-authors an *amicus* brief in the case.

Coker v. Georgia, 433 U.S. 584 (1977). The Supreme Court holds that Georgia's statute allowing a sentence of death for a convicted rapist is cruel and unusual punishment in violation of the Eighth Amendment. On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief opposing the imposition of the death penalty on a convicted rapist because historically, convicted rapists were sentenced to death as a result of the idea that a woman was a man's property and because the severity of such a sentence meant that often police would refuse to charge men with rape and juries would refuse to convict men of rape.

Nashville Gas Co. v. Satty, 434 U.S. 136 (1977). The Court finds that an employer's policy of denying accumulated seniority to employees returning from pregnancy leave violates Title VII in the absence of proof of business necessity of such a practice. The Women's Rights Project co-authors an *amicus* brief.

1978

Los Angeles Department of Water and Power v. Manhart, 435 U.S. 702 (1978). On behalf of the Women's Rights Project, Professor Ginsburg co-authors an *amicus* brief for this case in which the Supreme Court holds that requiring female workers to make larger pension fund contributions than their male counterparts violates Title VII since Title VII prevents employers from basing personnel policies on assumptions about differences between men and women as groups.

1979

Duren v. Missouri, 439 U.S. 357 (1979). On behalf of the Women's Rights Project, Professor Ginsburg successfully argues to the Supreme Court that a state statute exempting women from jury duty upon their request violates a defendant's Sixth and Fourteenth Amendment rights to be tried by a jury drawn from a fair cross-section of the community.

Orr v. Orr, 440 U.S. 268 (1979). On behalf of the Women's Rights Project, Professor Ginsburg authors an *amicus* brief for this case, in which the Supreme Court invalidates statutes providing that husbands, but not wives, may be required to pay alimony upon divorce and thus casts off the assumption that wives are dependent upon their husbands for financial support but husbands are never dependent on wives.

Califano v. Westcott, 443 U.S. 76 (1979). On behalf of the Women's Rights Project, Professor Ginsburg authors an *amicus* brief that helps persuade the Supreme Court to invalidate a program for unemployment benefits under the Aid to Families with Dependent Children program. The program provides benefits to families with unemployed fathers, but not to those with unemployed mothers, and the Court rules it is therefore unconstitutional because of its presumption that fathers are primary breadwinners while mothers' employment is secondary.

photo by Penny Weaver, courtesy of the Southern Poverty Law Center

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Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256 (1979). In a challenge to legislation that unquestionably burdens women disproportionately to men by providing a lifetime employment preference for state government jobs to veterans, who are overwhelmingly male, the Court concludes that such a preference is not unconstitutional, since it was adopted "in spite of" rather than "because of" its harmful effect on women.

1980

Wengler v. Druggists Mutual Insurance Co., 446 U.S. 142 (1980). The Court strikes down a state law denying widowers worker's compensation benefits upon the work-related death of their wives unless they prove dependency or incapacity, while granting widows such benefits automatically. Professor Ginsburg, on behalf of the Women's Rights Project, co-authors an *amicus* brief in the case.

HIGHLIGHT: Ruth Bader Ginsburg is appointed to the United States Court of Appeals for the District of Columbia.

1981

Kirchberg v. Feenstra, 450 U.S. 455 (1981). This Supreme Court case is the first to invalidate a law that gives a husband the right to control marital property without his wife's consent. Feenstra's husband signed a promissory

note mortgaging their marital home to his attorney without telling his wife, pursuant to a Louisiana statute that gave husbands the exclusive right to dispose of community property. The Supreme Court overturns the Louisiana law as an abridgement of married women's constitutional rights under the Equal Protection Clause of the Fourteenth Amendment.

County of Washington v. Gunther, 452 U.S. 161 (1981). In this case, in which the Women's Rights Project submits a key *amicus* brief, the Court holds that individuals can show illegal gender-based wage discrimination under Title VII even when no member of the opposite sex holds a nearly identical job. This case is important for combating wage discrimination, given continued patterns of gender segregation in employment.

Rostker v. Goldberg, 523 U.S. 57 (1981). The Supreme Court holds that mandatory draft registration for men only does not violate the Constitution. In this case, in which the Women's Rights Project serves as co-counsel for plaintiffs challenging the gender-based requirement, the Court holds that in questions of military service, special deference is accorded to Congress to make such gender-based distinctions.

HIGHLIGHT: Sandra Day O'Connor becomes the first woman to serve on the United States Supreme Court.

1982

Mississippi University for Women v. Hogan, 458 U.S. 718 (1982). The Supreme Court rules that it is unconstitutional for a state to provide a nursing school for women only, since there is no important governmental interest in perpetuating women's over-representation in the nursing field.

1983

Arizona Governing Committee v. Norris, 463 U.S. 1073 (1983). The Court holds that a state pension plan that allows employees to choose retirement benefits from one of several companies, all of which pay women lower benefits than men, violates Title VII. The Women's Rights Project authors an *amicus* brief.

Newport News Shipbuilding & Dry Dock Co. v. EEOC, 462 U.S. 669 (1983). In this case the Supreme Court acknowledges that the Pregnancy Discrimination Act establishes that discrimination based on a woman's pregnancy is, on its face, discrimination because of sex, and thus supercedes Gilbert. The case is brought by male employees who claim that the employer's health plan, which covered pregnancy-related services for female employees more fully than for spouses of male employees, discriminates on the basis of sex. The Court holds that such differentiation is indeed discrimination forbidden under Title VII.

1984

Roberts v. United States Jaycees, 468 U.S. 609 (1984). The Women's Rights Project co-authors an *amicus* brief in this case, urging the Supreme Court to affirm the state decision to strike down the Jaycees' policy of excluding women under state public accommodations law. The Court does so, holding that the Jaycees's exclusionary practices are not protected by the First Amendment and that Minnesota has a compelling interest in ending sex discrimination.

Hishon v. King & Spalding, 467 U.S. 69 (1984). The Supreme Court finds that partnerships, such as the respondent Atlanta law firm, are "employers" subject to Title VII's prohibition against sex discrimination, and that Title VII requires the law firm to consider women for partnership. The Women's Rights Project co-authors an *amicus* brief in this case.

1986

Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986). The Supreme Court holds that sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title VII.

1987

California Federal Savings & Loan Association v. Guerra 479 U.S. 272 (1987). In this case, an employer seeks a declaration that a state law requiring employers to provide pregnancy

leave and reinstatement is preempted by the Pregnancy Discrimination Act's requirement that pregnancy be treated like other disabilities. The Court holds that the Pregnancy Discrimination Act does not prohibit practices favoring pregnant women, and in any case, employers are free to provide comparable benefits to other disabled employees. The Women's Rights Project files an *amicus* brief.

Wimberly v. Labor & Industrial Relations Commission, 479 U.S. 511 (1987). The Supreme Court holds that a Missouri statute denying unemployment benefits to claimants who leave work "voluntarily" and "without good cause" attributable to work or to the employer can be applied to workers who leave because of pregnancy and is not preempted by a federal law that provides that no state can deny unemployment benefits to an individual solely on the basis of pregnancy. The ACLU Women's Rights Project filed an *amicus* brief.

Johnson v. Transportation Agency, Santa Clara, 480 U.S. 616 (1987). In this Title VII case brought by a male employee who was passed over for promotion in favor of a female employee with a lower test score, the Supreme Court holds that an employer can take sex into account in such situations if it does so pursuant to an affirmative action plan meant to remedy the under-representation of women in traditionally sex-segregated jobs.

1989

Price-Waterhouse v. Hopkins, 490 U.S. 228 (1989). In this Title VII case, the Supreme Court holds that when gender discrimination plays a part in an employer's decision about an employee, an employer may still avoid Title VII liability if it proves that other reasons played a large enough role in the decision that it would have made the same decision in the absence of discrimination. The Women's Rights Project co-authors a major *amicus* brief in the case. The *Hopkins* holding will be partially amended by Congress in the Civil Rights Act of 1991, which provides that an employee proves a violation of Title VII when she shows that discrimination plays any part in an employment decision, but may only receive damages if the employer fails to show that it would have made the same decision even in the absence of discrimination.

1990

Yellow Freight System, Inc. v. Donnelly, 494 U.S. 820 (1990). The Supreme Court holds that state courts, as well as federal courts, can hear Title VII claims. The case involves a woman who sought employment as a dock worker and was repeatedly passed over in favor of male candidates, though the company had assured her that it would hire her as soon as a position became available.

University of Pennsylvania v. EEOC, 493 U.S. 182 (1990). This case involves a claim by a Wharton Business School professor who was denied tenure

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that the reason for the denial was the negative evaluation of a department chairman who had sexually harassed her; the professor denied tenure argues that her qualifications were equal to or better than the five male professors who were granted tenure. The Supreme Court holds that universities have no common law or First Amendment privilege to withhold peer review materials relevant to charges of race or sexual discrimination in tenure decisions.

1991

United Auto Workers v. Johnson Controls, 499 U.S. 187 (1991). The Women's Rights Project authors an *amicus* brief that helps persuade the Supreme Court that Title VII forbids employers from adopting fetal-protection policies preventing fertile women from working in jobs that entail exposure to lead or other toxins that might harm a fetus. The case holds that women must be allowed to make their own decisions about pregnancy and dangerous work, and as long as women can perform their jobs, employers may not exclude them from certain kinds of work based on expressions of concern for children they might conceive.

1992

Franklin v. Gwinnet County Public Schools, 503 U.S. 60 (1992). The Supreme Court holds that Title IX supports a claim for monetary damages. In this case the high school student seeking damages claims she was sexually harassed and

abused by her teacher and coach and that administrators were aware of the harassment and abuse but took no action to stop it and encouraged her not to press charges against the teacher.

1993

Harris v. Forklift Systems, 510 U.S. 17 (1993). The Supreme Court holds that a person does not have to prove psychological damage in order to prevail in a sexual harassment suit, but can win based on evidence of conduct that would reasonably be perceived to be hostile and sexually abusive.



HIGHLIGHT: Ruth Bader Ginsburg becomes the second woman to serve on the United States Supreme Court.

1996

United States v. Virginia, 518 U.S. 515 (1996). Justice Ginsburg delivers the opinion of the court, ruling that the all-male Virginia Military Institute's (VMI) discriminatory admissions policy violates women's equal protection rights and ordering the school to admit women or forfeit its government funding. The Women's Rights Project participates in this case as *amicus* and as advisor.

M.L.B v. S.L.J., 519 U.S. 102 (1996). The Supreme Court holds that a state may not deny a parent the right to appeal termination of parental rights because poverty prevents her paying for the record; the state must supply the record itself.

1998

Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998). The Supreme Court unanimously holds that Title VII prohibits same-sex sexual harassment. The case involves a male offshore oil rig worker who was subjected to sex-related humiliating actions by male co-workers and physically assaulted in a sexual manner by two male co-workers and a supervisor. The Women's Rights Project co-authors an *amicus* brief in the case.

Faragher v. City of Boca Raton, 524 U.S. 775 (1998). The Supreme Court holds that when a harassing supervisor with authority over an employee takes a "tangible employment action" against the employee, the employer is strictly liable for the supervisor's action under

Title VII. The Women's Rights Project co-authors an *amicus* brief in the case.

Burlington Industries v. Ellerth, 524 U.S. 742 (1998). In this sexual harassment case, a companion to *Faragher*, the Court again holds that an employer is automatically subject to vicarious liability for an actionable hostile environment created by a supervisor when tangible employment action is taken. If no such "tangible employment action" has taken place, the employer may claim that it exercised reasonable care to prevent and correct promptly any sexually harassing behavior and that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998). The Supreme Court makes clear the circumstances under which schools are liable for damages when a teacher sexually harasses a student. The Court holds that under Title IX, a school is liable for damages when a school official with knowledge of the teacher's harassment and authority to take corrective action acts with "deliberate indifference" to the teacher's conduct.

1999

Saenz v. Roe, 526 U.S. 489 (1999). The Supreme Court holds that California's one-year residency requirement for individuals seeking full welfare benefits is an unconstitutional violation of individuals' right to trav-

el, as protected by the Fourteenth Amendment.

Davis v. Monroe County Board of Education, 526 U.S. 629 (1999). The Supreme Court rules that school districts may be liable under Title IX for student-to-student harassment if they are aware of the problem and act with "deliberate indifference" rather than try to resolve it. The Women's Rights Project participates as an *amicus*.

Miller v. Albright, 523 U.S. 420 (1999). The Supreme Court upholds different rules for unmarried citizen fathers versus those for unmarried citizen mothers who wish to transmit citizenship to their foreign-born, out-of-wedlock children. The Women's Rights Project co-authors an *amicus* brief in the case.

Kolstad v. American Dental Association, 527 U.S. 526 (1999). In this sex discrimination case, the Supreme Court holds that a court may grant punitive damages to a woman alleging sex discrimination in violation of Title VII even if she does not show that the employer's conduct was "egregious" or "outrageous." Because it is the employer's state of mind that is relevant, she must only show that the employer acted with malice or with reckless indifference to the lawfulness of his action. The Court also holds that an employer will not be vicariously liable for the discriminatory decisions of its managerial agents in cases where the decisions are contrary to the employer's good faith efforts to comply with Title VII. The Women's Rights Project joins in an *amicus* brief.

2000

United States v. Morrison, 529 U.S. 598 (2000). In this case brought under the civil rights remedy provision of the Violence Against Women Act (VAWA), which permits victims of gender-motivated violence to sue their attackers under federal law, the Supreme Court holds that: (1) the Commerce Clause does not provide Congress with authority to enact the civil rights remedy provision of VAWA, and (2) the enforcement clause of the Fourteenth Amendment does not provide Congress with the authority to enact the civil rights remedy.

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000). The Court holds that a jury may in some circumstances find gender discrimination in violation of Title VII based on evidence that the reasons an employer gives for an employment decision are untrue, even in the absence of any direct evidence of discrimination. The Women's Rights Project participates as *amicus*.

2001

Ferguson v. City of Charleston, 532 U.S. 67 (2001). In this case involving a South Carolina hospital that tests pregnant women for substance abuse and reports positive results to the police, the Court holds that pregnant women cannot be subject to warrantless, suspicionless searches simply because they are pregnant. The Women's Rights Project co-authors an *amicus* brief in this case.

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Pollard v. E.I. Dupont Nemours Co., 532 U.S. 843 (2001). The Women's Rights Project joins an *amicus* brief in this case in which the Supreme Court holds that "front pay" – a form of prospective relief awarded by courts in employment discrimination cases under Title VII – is not a form of "compensatory damages" subject to dollar caps. The plaintiff, Sharon Pollard, one of only a few women working in the historically male manufacturing plant of E.I. DuPont de Nemours and Company in Tennessee, sued after she was subjected to sexual harassment for several years by co-workers and supervisors who repeatedly taunted her for doing "men's work" and for holding a supervisory position over certain men.

Nguyen v. INS, 533 U.S. 53

(2001). The Women's Rights Project co-counsels this case challenging one of the few remaining statutes explicitly discriminating on the basis of gender. The law at issue automatically deems out-of-wedlock children born overseas to be United States citizens when their mothers are citizens, but requires affirmative steps acknowledging paternity before the child is 18 to establish the child's citizenship if only the father is a citizen. Voting 5-4 the Court holds the law to be constitutional, over a strong dissent by Justice O'Connor.

2003

Nevada Department of Human Resources v. Hibbs, 2003 WL 21210426. The Supreme Court holds that it is constitutional for

a state to be sued in federal court for money damages when that state has violated the Family Medical Leave Act (FMLA). The FMLA provides 12 weeks unpaid leave to employees to care for a new baby or seriously ill family member. The Supreme Court holds that the act's guarantee of leave to all workers, regardless of their gender, attacked the stereotype formally perpetuated by many state employers that care giving was a woman's responsibility rather than a man's. Such stereotypes stigmatized female employees, the Court holds, and discouraged men from taking on family responsibilities. The Court thus concludes that the FMLA's guarantee of leave protected against such discriminatory stereotypes. The Women's Rights Project joins in an *amicus* brief.



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The American Civil Liberties Union is the nation's premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

Women's Rights Project

The ACLU Women's Rights Project is part of the National ACLU. It was founded in 1972 by Ruth Bader Ginsburg, and since that time has been a leader in the legal battles to ensure women's full equality in American society. The WRP is dedicated to the advancement of the

rights and interests of women, with a particular emphasis on issues affecting low-income women and women of color.

The Women's Rights Project has overall responsibility for implementing ACLU policy in the area of gender discrimination. The WRP conducts direct litigation, files *amicus curiae* briefs, provides support for ACLU affiliate litigation, serves as a resource for ACLU legislative work on women's rights, and seeks to advance ACLU policy goals through public education, organizing and participating in coalitions. The WRP has been an active participant in virtually all of the major gender dis-

crimination litigation in the Supreme Court, in Congressional and public education efforts to remedy gender discrimination, and other endeavors on behalf of women.

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